

CASTENMILLER ET AL. - 09/739,622  
Client/Matter: 081468-0275503

### REMARKS

Claims 1-16, 18, 20, 21, 24, 27, 30 and 33 are pending. By this amendment claims 19, 22, 23, 25, 26, 28, 29, 31, 32, 34 and 35 are cancelled; and claims 1, 11, 12, 16, 18 and 27 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Entry of the Amendment under 37 C.F.R. §1.116 is proper as the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issues that would require further consideration and/or search as the amendments merely incorporate the subject matter of dependent claims into independent claims; (c) do not present any additional claims without canceling a corresponding number of claims; (d) satisfy a requirement of form by overcoming the rejections under 35 U.S.C. §112, second paragraph; and (e) place the application in better form for an appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented as they are in response to the indication of allowable subject matter entered in the final rejection.

It is also respectfully submitted that the finality of the January 30, 2004 Office Action is improper as the rejection of claims 33 and 34 does not present a *prima facie* case of obviousness. It is respectfully noted that independent claim 18 is rejected under 35 U.S.C. §103(a) over Yamada et al. (U.S. Patent 6,163,369) in view Kanaya et al. (U.S. Patent 5,995,222). However, claims 33 and 34 which depend from claim 18, are rejected under 35 U.S.C. §103(a) over Nishi (U.S. Patent 5,243,195) in view of Kanaya et al. and Makinouchi (U.S. Patent 5,907,392). As the rejections of claims 33 and 34 do not include the subject matter of Yamada et al., relied on to reject independent claim 18, the rejections of claims 33 and 34 fail to present a *prima facie* case of obviousness against claims 33 and 34. As the rejections of claims 33 and 34 are improper, Applicants respectfully submit that the finality of the Office Action is premature and Applicants are entitled to entry of the instant amendment. See MPEP §706.07(e).

The drawings were objected to under 37 C.F.R. §1.83(a). Although Applicants believe that the feature of claim 19, that the three position measuring devices are arranged orthogonally with respect to each other, is clearly shown in Figure 2 of the application, Applicants have cancelled claim 19 in order to advance prosecution of the application. The subject matter of claim 19 will be pursued in a continuation application. Reconsideration and

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withdrawal of the objection to the drawings under 37 C.F.F. §1.83(a) are respectfully requested.

Applicants appreciate the indication that the proposed drawing corrections filed May 16, 2003 has been approved. Upon receipt of a Notice of Allowance, Applicants will present formal drawings incorporating the drawing corrections filed May 16, 2003.

Applicants appreciate the indication that the objection to the specification under 35 U.S.C. §132 has been withdrawn in view of the substitute specification filed October 28, 2003. Applicants assume that the substitute specification has been entered.

Claims 27-29 were objected to. Claims 28 and 29 have been cancelled without prejudice or disclaimer and claims 27 has been amended in accordance with the suggestion of the Office Action. Reconsideration and withdrawal of the objection of claim 27 are respectfully requested.

Claims 22, 28 and 34 were objected to. Claims 22, 28 and 34 have been cancelled without prejudice or disclaimer and their subject matter incorporated into independent claims 1, 15 and 18, respectfully. Applicants have amended the subject matter of claims 22, 28 and 34 to read that the radiation source and the two-dimensional radiation detector are mounted to the reference frame so that the radiation beam from the radiation source is incident at a predetermined angle relative to the movable object table. Applicants respectfully note that claim 11 recites "the movable object table" and no objection has been raised to that phrase. Accordingly, it is respectfully submitted that the phrase "movable object table" is proper as inserted into independent claims 1, 15 and 18. Reconsideration and withdrawal of the objection to claims 22, 28 and 34 are respectfully requested.

Claims 22, 23, 25, 26, 28, 29, 31, 32, 34 and 35 were rejected under 35 U.S.C. §112, second paragraph. As discussed above, Applicants have amended the subject matter of claims 22, 25, 28, 31 and 34 to recite that the radiation and the two-dimensional detector are mounted to the reference frame so that a radiation beam from the radiation source is incident at a predetermined angle relative to the object table. Accordingly, it is respectfully submitted that the subject matter of these claims as incorporated into the respective independent claims is clear. Reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph are respectfully requested.

Applicants appreciate the indication that claim 11 would be allowable if rewritten in independent form. Claim 11 has been rewritten in accordance with the suggestion of the Office Action. Accordingly, it is respectfully submitted that claim 11 is allowable.

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Applicants appreciate the indication that claims 23, 26, 29 32 and 35 would be allowable if rewritten to overcome the rejection under 35 U.S.C. §112, second paragraph and to include all the limitations of base claim and intervening claims. As discussed above, Applicants have incorporated the subject matter claims 23, 26, 29, 32 and 35, and the subject matter of all the intervening claims into the respective independent claims from which they depend. Accordingly, it is respectfully submitted that independent claims 1, 12, 15, 16 and 18, and the remaining dependent claims are allowable.

In view of the above amendments and remarks, Applicants respectfully submit that all the claims are allowable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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